IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

MONDAY, THE 12TH NOVEMBER 2007 / 21ST KARTHIKA 1929

WA.No. 2283 of 2007

AGAINST THE JUDGEMENT IN WPC.18107/2006 Dated 26/03/2007
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APPELLANTS/PETITIONERS 2 TO 4
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1. VARKEY OUSEPH,
S/O. VARKEY VARKEY,
AGED 79 YEARS, VALAKATTU,
KUNAKAL P.O., VALAKOM.

2. SKANA OUSEPH,
VALAKATTU HOUSE,
KUNAKAL P.O., VALAKOM.

3. SANTHOSH P.K.,
PADINYAREKUDIYIL,
KUNAKAL P.O., VALAKOM.

BY ADV. SRI.K.RAMAKUMAR

RESPONDENTS/RESPONDENTS & IST PETITIONER.
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1. THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY,
LOCAL ADMINISTRATION DEPARTMENT,
THIRUVANANTHAPURAM.

2. TRIBUNAL FOR THE LOCAL SELF GOVERNMENT INSTITUTIONS,
THIRUVANANTHAPURAM.

3. VALAKOM GRAMA PANCHAYAT,
REP. BY ITS SECRETARY, VALAKOM.

4. THE KERALA STATE POLLUTION CONTROL BOARD
REPRESENTED BY THE CHIEF ENVIRONMENTAL ENGINEER,
GANDHI NAGAR, ERNAKULAM.

5. M.PRABASH,
CHAKKALAYI,
KUNNACKAL P.O, VALAKOM.

6. JOY M.M.,
MAPPILAKUNNEL HOUSE,
KUNNACKAL P.O, VALAKOM.

R1 BY SR.GOVERNMENT PLEADER SMT.K.MEERA
R3 BY ADV. SRI.PEEYUS A.KOTTAM
R4 BY ADV. SMT.K.K.THULASY BHAI,SC,POLLUTION CONTROL BOARD
R5 BY ADV.SMT.MINI.R.MENON

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 12/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.M.JOSEPH, J.

W.A.No.2283 of 2007

Dated, this the 12th day of November, 2007

JUDGMENT

H.L.Dattu, C.J.

This appeal arises out of an order passed by the learned Single Judge in W.P.(C) No.18107 of 2006 dated 26th March, 2007. By the impugned order, the learned Single Judge has confirmed the orders passed by the Tribunal and has further directed the third respondent Grama Panchayat to issue appropriate licence to the 5th respondent to run his crushing unit within the limits of the Valakom Grama Panchayat.

(2) This litigation has a chequered career. Initially, the Panchayat had granted permission to the 5th respondent to start his crushing unit within the limits of the Valakom Grama Panchayat. After change of the composition of the Panchayat, they have cancelled the permission granted earlier. The 5th respondent was made to run from pillar to the post. Every time whenever the Panchayat passed orders refusing to grant permission to the 5th respondent to run his crushing unit, he had to approach the various authorities.

(3) Since the third respondent Grama Panchayat refused to grant renewal of the licence to the 5th respondent to commence his crushing unit, he had to file an appeal before the Tribunal for Local Self Government Instututions. The Tribunal is not only a fact finding authority, but also can decide the question of law. During the pendency of the appeal before the Tribunal, the Tribunal had appointed an advocate as Court Commissioner who in turn has submitted a report before the Tribunal.

(4) The Tribunal taking into consideration the report of the Court

Commissioner and also taking into consideration the assertions and allegations made by the petitioners and its denial by the 5th respondent, has thought it fit to direct the Grama Panchayat to grant permission to the 5th respondent to run his crushing unit in Valakom Grama Panchayat. Aggrieved by the said order passed by the Tribunal, the petitioners were before this Court in W.P.(C) No.18107 of 2006.

(5) The learned Single Judge of this Court after tracing the history of the case and also the various orders passed by the Grama Panchayat and the Tribunal, has thought it fit to direct the Grama Panchayat to issue appropriate licence to the 5th respondent to run his crushing unit. The Court also has directed the Kerala State Pollution Control Board to have effected inspections of the crushing unit of the 5th respondent in regard to the air, noise and water pollution.

(6) Aggrieved by the orders passed by the learned Single Judge, the petitioners in the writ petition have presented this writ appeal before us.

(7) Sri.K.Ramakumar, learned counsel appearing for the appellants would submit that for enhancing the crushing capacity of the crushing unit, necessary permission requires to be obtained by the 5th respondent from the Grama Panchayat as well as the Pollution Control Board, and since that has not been obtained, the learned Single Judge was not justified in directing the Grama Panchayat to issue necessary licence.

(8) Per contra, learned counsel appearing for the 5th respondent would submit that the 5th respondent has no intention whatsoever to increase the crushing capacity of the crushing unit and therefore, the question of obtaining fresh permission from the Grama Panchayat and the Pollution Control Board

would not arise.

(9) The learned Single Judge in his order at paragraph 8 has specifically observed that the 5th respondent has not increased the crushing capacity of the crusher unit.

(10) The 5th respondent had commenced the crushing unit some time in the year 1992. In between, he had abandoned the crushing unit. After some time, in the year 2004, he sought for renewal of the licence to run the crushing unit. The Grama Panchayat initially had granted permission to the 5th respondent to run his crushing unit. The change of composition of the Grama Panchayat has resulted in withdrawing the permission granted earlier. That is how then 5th respondent had to approach the Tribunal. As we have already noticed, the Tribunal taking into consideration the report of the Court Commissioner and further being of the opinion that if a direction is issued to the Grama Panchayat to permit the 5th respondent to run his crushing unit in Valakom Grama Panchayat it would not cause any prejudice to the petitioners, has accordingly passed an order. The order so passed by the Tribunal is confirmed by the learned Single Judge.

(11) Since the 5th respondent is not seeking for enhancement of the crushing capacity of the crushing unit, the question of obtaining a fresh licence either from the Grama Panchayat or from the Pollution Control Board would not arise. In that view of the matter, we do not see any error in the orders passed by the learned Single Judge which would call for our interference. Therefore, while affirming the reasons and the conclusions reached by the learned Single Judge, we reject the writ appeal. We make it clear that the Pollution Control Board will take effective steps to monitor the crushing unit of the 5th respondent.

If, for any reason, the crushing unit of the 5th respondent causes any air, noise or water pollution, the Pollution Control Board would take effective steps as provided under the provisions of the Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974.

Ordered accordingly.

(**H.L.DATTU)**
CHIEF JUSTICE

(K.M.JOSEPH)
JUDGE

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